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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/766,278	01/19/2001	Charles A. Jennings	106108	9674
27148 7590 05/29/2008 POLSINELLI SHALTON FLANIGAN SUELTHAUS PC 700 W. 47TH STREET SUITE 1000 KANSAS CITY, MO 64112-1802				
EXAMINER BLAIR, DOUGLAS B				
ART UNIT 2142		PAPER NUMBER		
MAIL DATE 05/29/2008		DELIVERY MODE PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

09/766,278

**Applicant(s)**

JENNINGS ET AL.

**Examiner**

DOUGLAS B. BLAIR

**Art Unit**

2142

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-140 is/are pending in the application.
- 4a) Of the above claim(s) 103-106 and 135-140 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-58, 60-102 and 107-134 is/are rejected.
- 7) ☐ Claim(s) 59 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

## DETAILED ACTION

### *Election/Restrictions*

Applicant's election with traverse of claims 1-102 and 107-134 in the reply filed on 2/1/2008 is acknowledged. The traversal is on the ground(s) that substantive examination has begun and that the prior Examiner did not believe the claims required restriction, and the prior Examiner did not identify a different field of search for the claims and that because of all of the claims were examined, there is no burden in prosecuting all of the claims. This is not found persuasive for two reasons.

The first reason is the applicant made absolutely no attempt to address the actual substance of the restriction requirement. Though the timing of the requirement may not have been conventional, it is proper as the current Examiner believes that the applicant's claims present a serious burden on examination. It is unclear from the applicant's response if the applicant even read the restriction requirement as the actual substance of the requirement was not addressed.

The second reason is that the remarks filed by the applicant on 1/19/2007 directly contradict the applicant's arguments against the restriction filed on 8/13/2007. Specifically, on page 2 of the Remarks filed on 1/19/2007 the applicant argued that:

The Examiner generalized multiple claim limitations together, without identifying the specific limitations and the locations in the reference or references in which the specific limitations are alleged to be taught or disclosed. The Examiner identified disclosure from cited references that is unrelated to the claimed invention and that does not identify the claimed limitations. For this additional reason, the Examiner did not meet his burden and did not establish *prima facie* obviousness.

If the previous examiner did not identify all of the claim limitations and cited a reference that is **unrelated** to the claimed invention, how could substantive examination have occurred? Substantive examination would require related references.

The requirement is still deemed proper and is therefore made FINAL.

Claims 103-106 and 135-140 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected inventions, there being no allowable generic or linking claim.

### ***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required:

The applicant's specification does provide a description for what a stream routing processor (As in claims 1, 10, 45, 102, 107, and 130 among others) comprises. Though the term is used in numerous places, the applicant has provided no description for the term and the term is not standard in the art.

The applicant's specification does provide a description for what a stream caster (As in claims 1, 10, 45, 102, and 134 among others) comprises. Though the term is used in numerous places, the applicant has provided no description for the term and the term is not standard in the art.

### ***Claim Objections***

Claim 45 is objected to because of the following informalities: the limitation "validating a reservation identification using a valid identification" has "validating" conjugated incorrectly. Appropriate correction is required.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-3, 7-35, and 42-102 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 1 and 7-9 directed towards a system comprising a stream routing processor and a stream caster. The applicant's specification does not provide any description of what a stream routing processor is nor does it provide any description of what a stream caster is. Given the applicant's vague disclosure it is reasonable to assume that these elements are software.

Claim 2 further comprises a plurality of stream casters and is interpreted as software for the same reasons as claim 1.

Claim 3 further comprises a switch controller. Page 51 of the applicant's specification describes a switch controller which is comprised only of software elements (broadband service controller, circuit database, human machine interface, and network manager).

Because claims 1-3 and 7-9 are directed towards software per se they do not fall into a statutory category of invention.

Claims 10-35 and 42-44 are directed towards a switch that is comprised only of a stream routing processor and a stream caster. As discussed in claim 1, these elements are software elements. As the applicant's claimed switch is directed towards only software it is treated as software per se and therefore does not fit into a statutory category of invention.

Claims 45-90 are directed towards a system comprising a stream routing processor and a stream caster and are therefore not patentable for the same reasons discussed with respect to claim 1.

Claims 91-101 comprise a stream routing processor and a stream caster with the addition of a broadband service controller, a human machine interface, and a network manager. As discussed with respect to claim 3, all of the elements are software elements.

Claim 102 is directed towards a stream caster, a stream processor, and a switch controller. As discussed with respect to claims 1 and 3, these elements are all software.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 8, 45, 70, 74, 85-88, 102, 108, 111, 116, and 129 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the requested media" in the conclusion of the claim. No media is requested previously in claim 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 8 recites the limitation "the session". Neither claims 1 nor 7 to which claim 8 depends establish a specific session. There is insufficient antecedent basis for this limitation in the claim.

Claim 45 recites the limitation "the requested media" in the first limitation of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim 70 recites the limitation "the stream processor". There is insufficient antecedent basis for this limitation in the claim.

Claim 74 recites the limitation "the media". It is unclear which "media" is being referred to. There is insufficient antecedent basis for this limitation in the claim.

Claim 85 recites the limitation "the system" in the body of the claim. It is unclear whether this refers to the whole system of claim 45 or the log data system. There is insufficient antecedent basis for this limitation in the claim.

Claims 86-88 recite the limitation "the signaling logs". Claim 85 does not require signaling logs. There is insufficient antecedent basis for this limitation in these claims.

Claim 102 recites the limitation "the requested media" in the first limitation of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim 108 recites the limitation "the determining step". The limitations of claims 107 are not claimed as a series of steps. There is insufficient antecedent basis for this limitation in the claim.

Claim 108 recites the limitation "the stream routing processor acknowledging the inquiry". There is insufficient antecedent basis for this limitation in the claim.

Claim 111 recites the limitation "the address". There is insufficient antecedent basis for this limitation in the claim.

Claim 116 recites the limitation "the requested media streaming". There is insufficient antecedent basis for this limitation in the claim.

Claim 129 recites the limitation "the information block". There are a plurality of information blocks transmitted in claim 128, not just one. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-58, 60-101, and 107-134 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Publication Number 2006/0031551 to Agresta et al. As to claim 1, Agresta teaches a system for streaming media comprising: a stream routing processor configured to receive reservation data comprising a valid reservation identification and to transmit the valid reservation identification (**paragraph 40, server communication module 26 is considered the "stream routing processor"**); and a stream caster (**paragraph 40, the server module 38 is considered the "stream caster"**) configured to receive a reservation identification, to receive the reservation data identifying the valid reservation identification from



the stream routing processor, to validate the reservation identification using the valid reservation data, and, if valid, to stream at least partially the requested media **(the server module uses the data received from the server communication module to validate media requests)**.

As to claim 10, Agresta teaches a switch **(server 20 is considered the switch)** for streaming media comprising: a stream routing processor configured to receive signaling inquiring if the switch can stream requested media, to determine if the switch is configured to stream the requested media, and, if so to receive reservation data comprising a valid reservation identification **(paragraph 40, see mapping for claim 1)**; and a stream caster configured to receive a reservation identification, to receive from the stream routing processor the reservation data identifying the valid reservation identification, to validate the reservation identification using the valid reservation data, and, if validated, to stream at least partially the requested media **(paragraph 40, see mapping for claim 1)**.

As to claim 107, Agresta teaches a method for streaming media from a switch comprising: determining if a stream caster is configured to stream requested media (paragraph 40, the server module 38 uses the music content database to determine if it's capable of playing the music); receiving reservation data comprising a valid reservation identification at the stream caster (server module 38 uses the account database 36 to determine valid reservations); and accepting a session to stream at least partially the requested media upon receiving and validating a reservation identification using the valid reservation identification (paragraph 40).

As to claim 130, Agresta teaches a method for streaming media from a switch comprising: receiving at a stream caster reservation data comprising a valid reservation

identification (paragraph 40); and terminating an attempted session to stream requested media upon receiving and invalidating a reservation identification using the valid reservation identification (paragraph 51).

As to claim 132, Agresta teaches a method for streaming requested media from a switch comprising: receiving signaling inquiring if the switch is configured to stream the requested media; determining if the switch is configured to stream the requested media, and, if so, acknowledging the inquiry (paragraph 40); receiving reservation data comprising a valid reservation identification; receiving a reservation identification (paragraph 40); validating the reservation identification using the valid reservation data, and, if validated, streaming at least partially the requested media (paragraph 40).

As to claim 133, Agresta teaches a method for streaming media to a viewer comprising: determining if a streaming device is configured to stream requested media, and, if so, receiving reservation data comprising a valid reservation identification and transmitting the valid reservation identification (paragraph 40); and accepting a session from the viewer at the streaming device to stream at least partially the requested media upon receiving and validating a reservation identification using the valid reservation identification (paragraph 40).

As to claim 134, Agresta teaches a method for streaming media from a switch comprising: determining at a stream routing processor if a streaming device is configured to stream requested media (paragraph 40); receiving reservation data comprising a valid reservation identification and transmitting the valid reservation identification to the streaming device (paragraph 40); accepting a session to stream at least partially the requested media upon

receiving and validating a reservation identification using the valid reservation identification (paragraph 40); and monitoring the streaming device and notifying the stream routing processor of a status of the streaming device (paragraph 40).

As to the dependent claims that depend on the independent claims rejected based on Agresta, the multitude of broadly claimed and vaguely disclosed features are taught by Agresta. If the applicant has any question about interpretation the Applicant may contact the Examiner at the number listed at the conclusion of this office action and the Examiner will be glad to explain how each of claimed limitation is taught provided the applicant supplies a detailed agenda explaining why each claim is believed to be patentable and where each claim has support in the applicant's specification.

Claims 1-58, 60-102, and 107-134 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Number 6,363,434 to Eytchison.

As to claim 45, Eytchison teaches the claimed invention (as in exemplary claim 102) including a switch for streaming media to a viewer comprising: a stream caster configured to accept a session from the viewer to stream at least partially the requested media upon receiving and validating a reservation identification using a valid reservation identification (Figure 4 and col. 7, line 53-col. 8, line 7); a stream routing processor configured to determine if the stream caster is configured to stream the requested media, and, if so, to receive reservation data comprising the valid reservation identification and to transmit the valid reservation identification to the stream caster (Figure 4 and col. 7, line 53-col. 8, line 7); and a switch controller configured to monitor the stream caster and to notify the stream routing processor of a status of the stream caster (Figure 4 and col. 7, line 53-col. 8, line 7).

As to the rest of the independent and dependent claims that depend on the independent these claims are rejected based on Eytchison, the multitude of broadly claimed and vaguely disclosed features are taught by Eytchison. If the applicant has any question about interpretation the Applicant may contact the Examiner at the number listed at the conclusion of this office action and the Examiner will be glad to explain how each of claimed limitation is taught provided the applicant supplies a detailed agenda explaining why each claim is believed to be patentable and where each claim has support in the applicant's specification.

Claims 1-58, 60-102, and 107-134 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Publication Number 2003/0137531 by Katinsky et al.

As to claim 45, Katinsky teaches the claimed invention (as in exemplary claim 102) including a switch for streaming media to a viewer comprising: a stream caster configured to accept a session from the viewer to stream at least partially the requested media upon receiving and validating a reservation identification using a valid reservation identification (paragraphs 32-41); a stream routing processor configured to determine if the stream caster is configured to stream the requested media, and, if so, to receive reservation data comprising the valid reservation identification and to transmit the valid reservation identification to the stream caster (paragraphs 32-41); and a switch controller configured to monitor the stream caster and to notify the stream routing processor of a status of the stream caster (paragraphs 32-41).

As to the rest of the independent and dependent claims that depend on the independent these claims are rejected based on Katinsky, the multitude of broadly claimed and vaguely disclosed features are taught by Katinsky. If the applicant has any question about interpretation the Applicant may contact the Examiner at the number listed at the conclusion of this office

action and the Examiner will be glad to explain how each of claimed limitation is taught provided the applicant supplies a detailed agenda explaining why each claim is believed to be patentable and where each claim has support in the applicant's specification.

Claims 1-58, 60-102, and 107-134 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Publication Number 2001/0044851 by Rothman et al.

As to claim 45, Rothman teaches the claimed invention (as in exemplary claim 102) including a switch for streaming media to a viewer comprising: a stream caster configured to accept a session from the viewer to stream at least partially the requested media upon receiving and validating a reservation identification using a valid reservation identification (Figures 2 and 3 and paragraphs 89-99); a stream routing processor configured to determine if the stream caster is configured to stream the requested media, and, if so, to receive reservation data comprising the valid reservation identification and to transmit the valid reservation identification to the stream caster (Figures 2 and 3 and paragraphs 89-99); and a switch controller configured to monitor the stream caster and to notify the stream routing processor of a status of the stream caster (Figures 2 and 3 and paragraphs 89-99).

As to the rest of the independent and dependent claims that depend on the independent these claims are rejected based on Rothman, the multitude of broadly claimed and vaguely disclosed features are taught by Rothman. If the applicant has any question about interpretation the Applicant may contact the Examiner at the number listed at the conclusion of this office action and the Examiner will be glad to explain how each of claimed limitation is taught provided the applicant supplies a detailed agenda explaining why each claim is believed to be patentable and where each claim has support in the applicant's specification.

***Allowable Subject Matter***

Claim 59 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DOUGLAS B. BLAIR whose telephone number is (571)272-3893. The examiner can normally be reached on 9:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Caldwell can be reached on (571) 272-3868. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Douglas B Blair/

Primary Examiner, Art Unit 2142